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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

AUG 14 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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| In the Matter of |) | |
| |) | |
| Revision of the Commission's Rules |) | |
| To Ensure Compatibility With |) | CC Docket No. 94-102 |
| Enhanced 911 Emergency Calling Systems |) | |
| |) | |
| Request for an Emergency Declaratory |) | |
| Ruling Regarding Wireless Enhanced |) | DA 98-1504 |
| 911 Rulemaking Proceeding |) | |

**COMMENTS OF THE
PERSONAL COMMUNICATIONS INDUSTRY ASSOCIATION**

The Personal Communications Industry Association ("PCIA")¹ hereby submits its comments in response to the Federal Communications Commission's *Public Notice*² requesting comment on a request for an emergency declaratory ruling filed by the State of California's Program Manager in the wireless enhanced 9-1-1 rulemaking proceeding. The issue of immunity from liability is of extreme importance to all of our members -- not just those operating in the State of California. PCIA's comments have been crafted to respond to the three questions raised by the Commission in the *Public Notice*.

¹ PCIA is the international trade association created to represent the interests of both the commercial and private mobile radio service communications industries. PCIA's Federation of Councils includes: the Paging and Messaging Alliance, the Broadband PCS Alliance, the Site Owners and Managers Association, the Association of Wireless Communications Engineers and Technicians, the Private Systems Users Alliance, and the Mobile Wireless Communications Alliance. In addition, as the FCC-appointed frequency coordinator for the 450-512 MHz bands in the Business Radio Service, the 800 and 900 MHz Business Pools, the 800 MHz General Category frequencies for Business Eligibles and conventional SMR systems, and the 929 MHz paging frequencies, PCIA represents and serves the interests of tens of thousands of licensees.

² See *Public Notice*, DA 98-1504, CC Dkt. No. 94-102 (rel. July 20, 1998).

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1. Do carriers have an obligation to deploy wireless E911 service (Phase I) in California despite the fact that State statutes do not provide immunity from liability for E911 service provided?

Section 20.18(f) of the Commission's Rules provides that wireless carriers have no Phase I (or Phase II) E911 obligations until "...a mechanism for recovering the costs of [E911] service is in place."³ Therefore, PCIA believes that a carrier is not obligated to provide E911 service unless the state law immunizes the carrier from negligence tort causes of actions, or otherwise limits or indemnifies the carrier's liability. The potential liability from state causes of action associated with the provision of wireless E911 service is tremendous and must be resolved by federal or state authorities before carriers have any E911 obligation.

The potential for liability because of a carrier's inability in a given situation to provide E911 service is obvious. Throughout this proceeding, the Commission has repeatedly acknowledged that one-hundred percent accuracy in the provision of E911 services is unattainable. As a result, the Commission concluded that a carrier need only meet the degree of accuracy required under Phase II in 67 percent of the cases.⁴ The potential for liability is manifoldly increased by the Commission's mandate that wireless carriers provide E911 service to anyone with a wireless phone -- not just subscribers. The obligation to provide E911 services without the benefit of a contractual or statutory relationship with a network user is unprecedented. As a result of the Commission's mandate, carriers will be exposed to a much

³ 47 C.F.R. § 20.18(f).

⁴ In the Matter of Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket No. 94-102, RM-8143, Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 18676, 18671 (1996) ("*Report and Order*").

greater liability risk than normal. This fact alone warrants the recognition that carriers are entitled to immunity from liability.

Further, it is inconsistent with the principles of fair competition and regulatory parity to force wireless carriers to assume unlimited liability when states have historically held wireline carriers immune from the same liability. Therefore, it seems appropriate for either the FCC, upon further consideration, or for states to grant wireless carriers the same liability protection as wireline carriers enjoy in the provision of access to E911 services.⁵ As will be discussed below, where state law does not provide the wireless carrier with a clear limitation on liability, the carrier should be entitled to full recovery of the costs of insurance through the state's cost recovery mechanism.

Although wireless E911 is a service of unparalleled public benefit that should be implemented in a reasonably and timely manner, wireless carriers simply cannot assume the risk of massive tort liability stemming from E911 service, and remain a competitive, low-cost service.

2. If carriers are obligated to deliver Phase I service without immunity from liability (either statutory or contractual), is the State required under the cost recovery rules to reimburse carriers for the cost of insurance policies covering their provision of wireless E911 service?

States would be required under the cost recovery rules to reimburse carriers for the cost of insurance policies covering their provision of E911 service. As noted earlier, pursuant to Section 20.18(f) of the Commission's Rules, a carrier is not obligated to provide E911 service unless a

⁵ It is long-settled federal public policy to allow common carriers to limit their liability for negligent acts as a means for promoting carriers' willingness and ability to provide reasonably priced service.

mechanism for recovering the costs of the E911 service is in place.⁶ The costs of insurance premiums are a direct result of the carrier's 911 obligations and must be recoverable through the state's cost recovery mechanism, just as expenses for providing ALI capability, priority calling capabilities, and other elements of E911 compatibility will entail substantial costs and should be recoverable. Wireless carriers traditionally have recovered similar extraordinary costs through surcharges, and wireless carriers should be given an equivalent opportunity to treat 911 expenses as extraordinary.

As the State of California's 911 Program Manager points out in her letter to the Commission, the costs of such insurance would be exorbitant. The State of California estimates that it would cost carriers there at least \$50 million annually for such insurance.⁷ This figure is on top of the estimated \$15 million annually for statewide, commercial implementation of wireless E911 service.⁸ The high premium proves that state tort law *must* be amended to immunize carriers from such liability and that the underlying the enormous costs of E911 service should not be unloaded entirely upon carriers. The high cost of insurance premiums also highlights the fact that this is a cost recovery issue that needs to be resolved before carriers are forced to bear *any* E911 obligations.

⁶ 47 C.F.R. § 20.18(f).

⁷ Letter from Leah A. Senitte to Chairman William E. Kennard, at 2 (July 20, 1998).

⁸ *Id.* As noted in the letter, this estimate is based on the initial estimate of some major wireless carriers that the cost of providing E911 service is approximately \$0.25 per subscriber, per month.

3. Regarding selective routing, what is meant in the Commission's E911 First Report and Order by the reference to "appropriate PSAP?"

As noted in the *E911 Memorandum Opinion and Order*, the responsible local or state entity has the authority and responsibility to designate the PSAPs that are most appropriate to receive wireless 911 calls.⁹ The "appropriate PSAP" is determined by the location of the 911 caller. Usually, the PSAP that is closest to the 911 caller is the most "appropriate PSAP." However, for a variety of reasons (*e.g.*, local jurisdiction, state jurisdiction, geographic barriers, contractual arrangements, etc.), this is not always the case.¹⁰ Nevertheless, wireless 911 calls should be accepted and transmitted in accordance with instructions from the appropriate PSAP, and in line with the transmission of 911 calls on the wireline network.

4. Conclusion

PCIA believes that the lack of adequate carrier immunity has been and will continue to be a major impediment to the full deployment of wireless E911 service. Phase I and Phase II E911 requirements must be contingent on the implementation of adequate immunity and/or cost

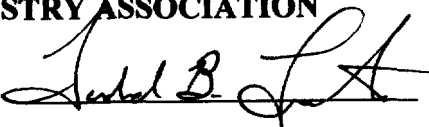
⁹ Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket No. 94-102, RM-8143, *Memorandum Opinion and Order*, 12 FCC Rcd 22665, 22713 (1997) ("*E911 Memorandum Opinion and Order*"). In a related footnote, the Commission notes that each state has developed its own 911 emergency service system. The Commission adds that in many jurisdictions, the local wireless carriers and PSAPs have coordinated to determine "designated PSAPs" to receive wireless 911 calls." However, in California, all wireless 911 calls are routed to the California Highway Patrol. *Id.*, at n. 255.

¹⁰ In the *Memorandum Opinion and Order*, the Commission states that "[u]ntil the relevant state or local government entities develop a routing plan for wireless 911 calls within their jurisdictions, covered carriers can comply with our rules by continuing to route 911 calls to their incumbent wireless PSAPs. *Id.*, at 22714. Further, selective routing of calls to the appropriate PSAP based on the location of the caller is complicated by the fact that a wireless caller is often moving and the transmission may be received at more than one cell site. *See Report and Order*, 11 FCC Rcd 18676, 18680.

recovery mechanisms. Until that time, carriers do not have any obligation to deploy wireless E911 service in California or elsewhere.

Respectfully submitted,

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